

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REPLACING CHAPTER 4-6 OF THE CITY CODE REGARDING PAWNSHOPS AND DEALERS IN SECONDHAND GOODS; CREATING AN OFFENSE AND PROVIDING A PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The City Code is amended by repealing Chapter 4-6 and replacing it with a new Chapter 4-6 to read as follows:

CHAPTER 4-6. PAWNSHOPS AND SECONDHAND DEALERS.

ARTICLE 1. PAWNSHOPS

§ 4-6-01 APPLICABILITY.

This article applies to a pawnshop licensed under Chapter 371 (*Pawnshops*) of the Texas Finance Code.

§ 4-6-02 HOLD PERIOD SHORTENED FOR CERTAIN PAWNSHOPS.

The hold period for property purchased from the general public required by 7 Texas Administrative Code § 85.420 (*Purchase Transactions*) is shortened to seven days for a pawnshop that enters the pawn and purchase ticket information in an electronic system prescribed by the chief of police.

ARTICLE 2. SECONDHAND DEALERS.

§ 4-6-21 DEFINITIONS.

In this article:

- (1) **APPLICANT** means a person who applies for a license under this article. If the applicant is not a natural person, the term includes an owner, director, or officer of the applicant.

- (2) **AUTOMOBILE ACCESSORY** means a hubcap, wheel cover, radar detector, recorded music player, removable automobile top, or an item that is crafted or designed for use in or on an automobile as an accessory item.
- (3) **BUSINESS DAY** means a day that a secondhand dealer transacts business with a member of the public, or is open to the public for the transaction of business.
- (4) **CRAFTED PRECIOUS METAL** means jewelry, silverware, coins, bars, or any object crafted, in whole or in part, from gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or their alloys.
- (5) **JEWELRY** means a gem, a jewel, or an object made of a precious metal that is worn for adornment, including, but not limited to, a gem stone removed from a mounting.
- (6) **MOTORCYCLE ACCESSORY** means an item that is crafted or designed for use in or on a motorcycle as an accessory item.
- (7) **POWER TOOL** means a tool powered by electrical current, a battery, solar energy, or liquid or gaseous fuel, including, but not limited to, pneumatic and welding equipment.
- (8) **REGULATED MERCHANDISE** means any of the following items of used merchandise:
- (a) an item that bears or as originally manufactured bore a manufacturer's serial number;
 - (b) an audio or video recording, including but not limited to a motion picture or a video game;
 - (c) an automobile accessory;
 - (d) a business machine;
 - (e) a crafted precious metal;
 - (f) an electronic device, including, but not limited to, a radio, a television, a telephone or mobile telephone, an audio or video recorder or player, a computer, a video camera, a mobile telephone with computing ability and connectivity, or a device that is used in playing a video or computer game;
 - (g) a household appliance;

- (h) jewelry;
 - (i) a motorcycle accessory;
 - (j) a musical instrument or an accessory used with a musical instrument, including, but not limited to, sound amplification equipment;
 - (k) optical equipment, such as binoculars, a telescope, or a microscope;
 - (l) photographic equipment;
 - (m) a power tool;
 - (n) a sporting good, or;
 - (o) a weapon.
- (9) **SECONDHAND DEALER** means a person buying, trading, selling, or accepting for sale on consignment regulated merchandise.
- (10) **USED MERCHANDISE** means personal property that has been previously sold or transferred to a person for his own use or the use of another.

§ 4-6-22 APPLICABILITY.

- (A) This article does not apply to:
- (1) A pawnshop licensed under Chapter 371 (*Pawnshops*) of the Texas Finance Code;
 - (2) sales involving the transfer of a motor vehicle title;
 - (3) a garage sale allowed by Section 25-2-902 (*Garage Sales*);
 - (4) a non-profit business that sells only donated items;
 - (5) a person who occasionally sells a personal item to another person and:
 - (a) does not engage in selling regulated merchandise as a business; and
 - (b) engages in fewer than six such transactions in a one year period.

- (B) This article is cumulative of other law.

§ 4-6-23 LICENSE REQUIRED.

- (A) A person may not do business as a secondhand dealer without a license.
- (1) A secondhand dealer who conducts business at more than one location must obtain a separate license for each business location.
- (B) To obtain a license as a secondhand dealer a person must make a written application to the chief of police. The application must provide:
- (1) the applicant's name and the name the of the business;
 - (2) in the case of a partnership, corporation, or other business association, the names of individual members of the partnership or officers of the corporation or business association;
 - (3) a copy of the business's assumed name certificate, if any;
 - (4) the mailing address of the business and, if different, the physical address or location of the business;
 - (5) a statement that the applicant has not been convicted of a violation of this chapter in the immediately proceeding two calendar years;
 - (6) a statement that the applicant has not been convicted of an offense involving theft, fraud, or tampering with or falsification of evidence or official records;
 - (7) a notarized statement that all information provided by the applicant on the applicant's application is correct.
- (C) The chief of police may require additional information or identification reasonably necessary to determine an applicant's eligibility for a license under this article.
- (D) Each application must be accompanied by a non-refundable fee. In addition to the application fee authorized by this subsection, the chief of police shall charge a fee for each temporary license issued under this article. The amount of a fee authorized by this ordinance shall be set by ordinance.
- (E) A license issued under this article expires on the second anniversary of the date the license is issued. A license that is revoked and reissued expires on the license's original expiration date. An applicant whose application expires must apply for a new license and pay a new fee. The chief of police may issue a temporary license while the application for a new license is being processed.

- (F) The chief of police may adopt rules consistent with this article for a temporary license for a secondhand dealer who does not maintain a permanent place of business in the City.
- (G) The chief of police may deny a license, and may revoke a license previously issued under this article, if the chief finds that:
- (1) the applicant's place of business is not in compliance with applicable laws;
 - (2) the applicant has been convicted of a violation of this chapter in the immediately proceeding two calendar years;
 - (3) the applicant has supplied incorrect information on the applicant's application;
 - (4) the applicant, or an employee of the applicant whose duties include the purchase of sale of regulated merchandise, has been convicted of an offense involving theft, fraud, or tampering with or falsification of evidence or official records.
- (H) An applicant may appeal a denial or revocation of a license. An appeal must be:
- (1) in writing;
 - (2) submitted to the chief of police with 15 working days of the date of the denial or revocation of the license; and
 - (3) must clearly state why the chief's decision to deny or revoke the license was incorrect.
- (I) On receipt of a written appeal, the chief of police shall schedule a hearing to be held no later than the 30th day after the date the chief receives the written appeal. The hearing shall be before a hearing examiner selected by the chief. The hearing examiner shall issue a written opinion not later than the 15th working day after the date the hearing concludes recommending that the denial or revocation of the license be upheld, or recommending that the chief issue or reinstate the license. The hearing examiner's opinion must include findings of fact and conclusions of law. The chief may accept or reject the hearing examiner's recommendation. Not later than the 15th working day after the date that chief receives the hearing examiner's written opinion, the chief will either reaffirm the decision to deny or revoke the applicant's license or issue or reinstate the applicant's license. The chief's decision is final.

- (J) A secondhand dealer must post the dealer's license in a place clearly visible to the public in each place of business.

§ 4-6-24 CHANGE IN INFORMATION.

- (A) A secondhand dealer shall report a change in the information required to be submitted with a license application to the chief of police within 15 working days after the change occurs.
- (B) If the change is either to the name of the business or to the physical location of the business, the secondhand dealer must obtain a new license, and pay a new license fee. The chief of police may issue a temporary license while the application for a new license is being processed.

§ 4-6-25 IDENTIFICATION REQUIRED: SELLER MUST ATTEST TO OWNERSHIP.

- (A) At the time a secondhand dealer purchases or receives regulated merchandise in the course of business, the secondhand dealer shall require the person selling or transferring the regulated merchandise to the secondhand dealer to provide one of the following, which must be current and include the person's photograph:
- (1) a driver's license issued by a state, territory, commonwealth, possession, or district of the United States;
 - (2) a personal identification certificate issued by the Texas Department of Public Safety, or a similar certificate issued by another state, territory, commonwealth, possession, or district of the United States;
 - (3) a passport issued by the United States or issued by another country and recognized by the United States;
 - (4) a United States military identification;
 - (5) a matricula consular issued by the Mexican Consulate.
- (B) At the time a secondhand dealer purchases or receives regulated merchandise in the course of business, the second dealer shall require from the person selling or transferring the regulated merchandise to the secondhand dealer a written statement attesting to the person's ownership of property at the time of the transaction.
- (C) A secondhand dealer may not purchase or receive regulated merchandise except from a person who provides the identification and statement required by this section.

§ 4-6-26 INVENTORY.

- (A) A secondhand dealer shall make each item of regulated merchandise purchased by or received by a secondhand dealer in the course of business open to inspection by a police officer during normal business hours.
- (B) A secondhand dealer may not purchase, receive, or possess an item of regulated merchandise from which the manufacturer's identification or serial number or brand has been altered, removed, or obliterated by means other than by wear caused by ordinary use of the item by a consumer.
- (C) If a police officer finds an item of regulated merchandise described by subsection (B) in the possession of a secondhand dealer, the police officer may seize the item and hold it at the police department for 60 days. At the time of the seizure of the property, the police officer shall issue to the secondhand dealer a receipt for the property notifying the secondhand dealer that the property may be redeemed on or after the 61st day after the date on which the item was seized unless it is determined by the chief of police to be evidence in an investigation.
- (D) A police officer may order a secondhand dealer to stop the sale or removal from the secondhand dealer's place of business any item of regulated merchandise for a period of 60 days or until the property is released by the officer. After receiving the order a secondhand dealer may not sell the item or permit the item to be removed from the secondhand dealer's place of business until the 61st day after the date the order was received by the secondhand dealer or until the item is released by the officer issuing the order.
- (E) Except as provided by subsection (F), a secondhand dealer shall retain each item of regulated merchandise purchased by or received by the dealer in the course of business in its original condition for a period of at least 10 business days after the purchase or receipt during which time the secondhand dealer may not sell the item or permit the item to be removed from the secondhand dealer's place of business.
- (F) This subsection applies only to an item of crafted precious metal. If the secondhand dealer photographs the item and reports the item, including the photograph, electronically as provided by Section 4-6-29(*Recordkeeping Required*), the secondhand dealer shall retain each item of regulated merchandise purchased by or deposited with the dealer in its original condition for a period of at least seven business days after the purchase or deposit during which time the secondhand dealer may not sell the item or permit the item to be removed from the secondhand dealer's place of business. A photograph must be of sufficient

clarity to reasonably allow a person to identify the item photographed. The photograph must conform to any specification adopted by the chief of police.

§ 4-6-27 RECORDKEEPING REQUIRED.

- (A) A secondhand dealer shall maintain records required by this article in hard copy in a format prescribed by the chief of police. A secondhand dealer shall maintain each record required by this article for a period of three years from the date the record is created.
- (B) In addition to the hard copy records required by subsection (A), a secondhand dealer shall report each record required by this article by entering the record in an electronic system prescribed by the chief of police. A secondhand dealer shall enter into the electronic system each record required to be created for that day's transactions at the end of each day that a secondhand dealer conducts business. A secondhand dealer who has had no reportable transactions during a day that the secondhand dealer is open for business must report that fact to the chief of police.
- (C) A record kept or reported under this article is a government record. By entering a record electronically a person attests to the truth of the information stated in the record. Notwithstanding any other provision of the City Code, a record kept or reported under this article is considered to be under oath by the person required to keep and report the record regardless of the absence of verification, including a signature.
- (D) A secondhand dealer must keep the following records with respect to each item of regulated merchandise:
 - (1) an accurate description of each item purchased or received, including the item's serial number;
 - (2) the name and address of the person from whom the item is purchased or received, and the kind and number of that person's identification required by Section 4-6-25(A);
 - (3) the date and time of the transaction;
 - (4) if the transaction is a purchase, the amount of consideration paid to the seller;
 - (5) the statement required by Section 4-6-25(B).

§ 4-6-28 ADMINISTRATION.

The chief of police may adopt rules and forms to administer and enforce this article.

§ 4-6-29 PENALTY.

- (A) A person commits an offense if the person violates this article. An offense under this article is a Class C misdemeanor, punishable by a fine not to exceed \$500.00, as provided in Section 1-1-99 (*Offenses; General Penalty*).
- (B) A secondhand dealer licensed under this article whose employee or agent violates a provision of this article is equally guilty with the offender and subject to the same penalty.
- (C) A culpable mental state is not required, and need not be proved, for an offense under this section.
- (D) Each day that a violation occurs or continues is a separate offense.

PART 2. This ordinance takes effect on _____, 2012.

PASSED AND APPROVED

_____, 2012 §
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 § _____
 Lee Leffingwell
 Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley Gentry
City Clerk